

REMARKS

The Office has issued a Restriction on June 14, 2005 and then a replacement Restriction on July 14, 2005. Applicants hereby expressly traverse this rejection as being improper.

Applicants maintain that Group I claims (1-44, 64-77) are not related to Group II claims (49-63, 78-80) as combination/subcombination as contended by the Office. In fact, the Office has already allowed independent claims in both Groups. This fact is evidence that Group I and II claims are not related as combination/subcombination. Because the Groups are not related as combination/subcombination and because prosecution of all the claims would not be an extra burden on the Office, the restriction requirement should be withdrawn.

Furthermore, applicants maintain that the restriction is not proper because it was not made before an action on the merits, nor was it made before final action. 37 CFR §142(a) (“Such [restriction] requirement will normally be made before any action on the merits; however, it may be made at any time before final action.”) *See also* MPEP §811 and §811.02. Applicants have received at least eight office actions on the merits in this case including two final office actions. For this reason, the restriction is improper. Also, the restriction is not fair to the applicants considering the fact that substantial prosecution has ensued. At this point in the prosecution, the Office cannot argue that there would be a serious burden on the Examiner to examine all of the claims inclusively because of having done so for over five years of prosecution.

Furthermore, applicants have prosecuted claims 1-10, 12-25, 27-44, 64-77, 80 to the point of allowance and claims 11, 26 59, 61 and 62 to the point of allowability. Considerable expense has already been incurred by the applicants in this prosecution and applicants believe that restriction at this point would unfairly prejudice applicants, disrupt prosecution and result in increased burden and costs. Applicants maintain that there is no reason for restriction at this time, in particular, because for over five years of prosecution including several actions on the merits and final actions, there has not been a reason to restrict the claims. To do so now is too late and unfairly prejudicial against the applicants.

Furthermore, the restriction requirement is not proper because it was not made as early as possible in the prosecution. MPEP § 811 (“This means that the examiner should make a proper requirement as early as possible in the prosecution...”). For this reason, the restriction is improper.

Also, this restriction requirement is against Patent Office policy. “The Office policy is to usually defer action on the merits until after the requirement for restriction is complied with or withdrawn.” MPEP §810.02. *Ex parte Pickles*, 1904 C.D. 126, 109 O.G. 1888 (Comm’r Pat. 1904); *Ex parte Snyder*, 1904 C.D. 242, 110 O.G. 2636 (Comm’r Pat. 1904); and *Ex parte Weston*, 1911 C.D. 218, 173 O.G. 285 (Comm’r Pat. 1911). Because this restriction requirement is against Office policy, it should be withdrawn.

Applicants respectfully request reconsideration of the restriction and withdrawal of the requirement for the above reasons. Applicants provisionally elect Group I claims (1-44, 64-77). Applicants expressly reserve their right under 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

In the event that a telephone conference would expedite prosecution of this patent application, the Examiner is invited to contact the Attorney for Applicants at the number listed below.

Respectfully submitted,

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